

REMARKS

The present amendment is in response to the Official Action dated December 29, 2005. Claims 8, 11, and 14 have been amended. Claim 19 has been canceled. Claims 20-23 are new. Therefore, claims 1-18 and 20-23 are currently pending. The following sets forth Applicants' arguments relating to the presently pending claims.

As an initial matter, Applicants thank the Examiner for indicating that claims 8, 11 and 16-18 would be allowable if rewritten in independent form. In fact, Applicants have added new claims 20-23, which include such allowable subject matter. Specifically, new claim 20 is essentially original claim 11 rewritten in independent form, and claims 21-23 are dependent claims including further allowable material. Given the indication by the Examiner of the allowability of such subject matter, it is respectfully requested that new claims 20-23 be moved into a condition of allowance.

In the Official Action, the Examiner first notes a restriction which was required under 35 U.S.C. § 121. Specifically, in the restriction requirement, the Examiner set forth that claims 1-18 are drawn to a bone cutting block, and that claim 19 is drawn to a method of forming such a block. Because the Examiner has determined such inventions to be distinct from one another, he has restricted the claims accordingly. This was agreed upon in a telephone discussion of December 27, 2005 with Applicants' counsel, Kevin M. Kocun, and a cancellation of claim 19 is hereby affirmed in the present response. However, Applicants reserve the right to pursue such canceled claim in any divisional and/or continuation cases relating to the present application.

Further in the Official Action, the Examiner has rejected claim 14 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly

claim the subject matter which Applicants regard as the invention. Specifically, the Examiner has asserted that the limitation "said three passages of said base portion" in lines 12-13 of that claim does not have proper antecedent basis. Applicants have amended independent claim 14 in the present response to, among other reasons, provide proper antecedent basis for this limitation. As such, Applicants respectfully request that the rejection under 35 U.S.C. § 112 be removed.

Still further in the Official Action, the Examiner has rejected claims 14 and 15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,393,958 to Owens *et al.* ("Owens"). Essentially, it is the Examiner's position that Owens discloses a cutting block including a plastic base portion having a first side and a second side with three slots extending therebetween, a first guide portion having four slots, and a second guide portion having four slots. In addition, the Examiner asserts that Owens also teaches the first guide portion being attached to the first side of the base portion and the second guide portion being attached to the second side of the base portion, with all slots being in communication with the respective slots in adjacent portions.

With regard to the rejections of claims 14 and 15, Applicants respectfully point out that Owens teaches a miter box and has no mention or relation to the orthopedic field. Clearly, the miter box taught in Owens cannot be utilized in the same fashion that the cutting block in the present invention can be. Specifically, claim 14 has been amended to specifically claim that the cutting block be adapted for guiding a bone cutting tool, something not taught by Owens. In addition, Applicants note that independent claim 14 has also been amended to include the limitation that the base portion and the first and second guide portions be made of different materials. This is something simply not taught by Owens. Rather, Owens teaches

constructing at least the cutting portions of a miter box of a single material. As such, it is respectfully submitted that amended independent claim 14 is not anticipated by Owens.

In addition, it is noted that the new limitation of amended independent claim 14 is further limited by the limitation of dependent claim 15, as well as the limitation of noted allowable dependent claim 16. In both cases, the particular material is limited to a polymer for the base portion and a metallic material for the first and second guide portions. Given that Applicants believe independent claim 14 to constitute allowable subject matter as amended, it is respectfully requested that the rejection of such claim be removed and the claim be moved into a condition of allowance. As dependent claims 15-18 properly depend upon independent claim 14, allowance of such claims is also respectfully requested.

Finally in the Official Action, the Examiner has rejected claims 1-7, 9, 10, 12, and 13 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,749,876 to Duvillier *et al.* ("Duvillier") in view of U.S. Patent Application Publication No. 2004/0260301 to Lionberger *et al.* ("Lionberger"). In this rejection, it is the Examiner's position that Duvillier discloses a bone cutting apparatus including all of the limitations of the above-noted rejected claims but fails to disclose a bone cutting apparatus comprising a polymeric material. However, the Examiner cites Lionberger in support of his contention that a guide made of a polymer material would have been obvious to one of ordinary skill in the art at the time of filing of the present application. Thus, in whole, it is the Examiner's position that the combination of Duvillier and Lionberger renders the invention of claims 1-7, 9, 10, 12, and 13 obvious and unpatentable.

In response to these latter rejections, Applicants first note that neither Duvillier nor Lionberger teach an orthopedic

cutting block having a first body and a second body where at least one aperture of the first communicates with a cutting tool guide surface of the second body to create a passageway therethrough. Rather, both Duvillier and Lionberger teach solid cutting blocks with a single slot or cutting surface extending through a unitary body portion, whether polymeric or not. Further, neither of the Duvillier or Lionberger references teach such a cooperation where a portion of the cutting block is polymeric and a portion of the cutting block is nonpolymeric. More particularly, although Lionberger discloses that the guide taught therein may be of a polymeric material, it makes no mention of a cooperating portion made of nonpolymeric material. Therefore, Applicants submit that neither the Duvillier nor Lionberger references, or the combination of both, teach the claimed structure of independent claim 1 of the present invention. That claim specifically requires a cutting block having two body portions, where one body portion is constructed of polymeric material and where the other body portion is constructed of a nonpolymeric material. In addition, independent claim 1 requires that such body portions cooperate with one another so that an aperture extending through the polymeric body portion for receiving a bone cutting tool is in communication with a cutting tool guide surface on the nonpolymeric body portion. Once again, this is a combination not taught nor suggested by either Duvillier or Lionberger, or even the combination of both. As such, Applicants respectfully request that currently pending independent claim 1, as well as its proper dependent claims 2-13 be moved into a condition of allowance.

Finally, Applicants note that dependent claims 8 and 11 have been amended to comport with the preferred embodiment taught in the specification of the present application. As is clearly shown in multiple drawings, and in figures 3 and 4

particularly, the first body portion, i.e., the polymeric body portion, shown in the drawings includes three apertures or passages therethrough, rather than the four inadvertently noted in originally filed dependent claims 8 and 11. Thus, such claims have been amended to properly relate to the preferred embodiment.

In light of all of the above, Applicants respectfully submit that currently pending claims 1-18 are not anticipated nor suggested by any of the prior art of record. As such, Applicants respectfully request that the rejections of such claims be removed and the claims be moved into a condition of allowance.

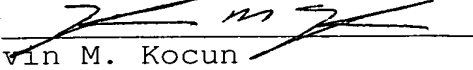
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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